

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs December 30, 2009

**IN RE DEASHON A. C.**

**Appeal from the Chancery Court for Hamilton County  
No. 09-A-018      W. Frank Brown, III, Chancellor**

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**No. E2009-01633-COA-R3-PT - FILED MARCH 31, 2010**

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The mother appeals the termination of her parental rights to her son. Following a bench trial, the trial court terminated the mother's parental rights. The mother has appealed. We affirm the termination of the mother's parental rights.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Affirmed; Case Remanded**

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which HERSCHEL P. FRANKS, P.J. and CHARLES D. SUSANO, JR., J., joined.

Cara C. Welsh, Chattanooga, Tennessee, for the appellant, Ashley K.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Lindsey O. Appiah, Assistant Attorney General, Nashville, Tennessee, for the Tennessee Department of Children's Services.

Robert D. Bradshaw, Chattanooga, Tennessee, Guardian Ad Litem.

**OPINION**

**I. BACKGROUND**

The Department of Children's Services ("DCS") became involved with the child,

Deashon<sup>1</sup> A. C. (“Deashon” or “the Child”) on June 20, 2007, when Ashley T. K. (“Mother”) left Deashon (d.o.b. 8/8/05) and his brother, Johnny E. K. (“Johnny”), with a babysitter. The record reveals that Johnny, who was three years old at the time, wandered away from the babysitter’s home at 3 a.m. When Mother could not be located, the police were notified. Subsequently, the police discovered that there was an outstanding warrant for Mother and arrested her. She was incarcerated until September 26, 2007. As a result of her incarceration, DCS took both children into protective custody. DCS was awarded temporary custody on June 25, 2007. On November 6, 2007, the children were adjudicated to be dependent and neglected.

Mother entered into several permanency plans with DCS. The first plan, dated July 6, 2007, required Mother to maintain a safe, stable, and permanent home where the children’s medical, education, nutritional, emotional, and developmental needs would be consistently met; to maintain a legitimate, verifiable source of income; to pay child support as ordered by the Child Support Court; to demonstrate the ability to appropriately parent, nurture, and protect the children by completing a mental health intake and following through with all of the recommendations; to maintain regular visitation with the children; to remain drug and alcohol free; to submit to an alcohol and drug assessment and following through with all of the recommendations; to submit to random drug screens and sign a release to allow DCS to monitor her progress and compliance; to resolve all legal issues; and to maintain contact with DCS at all times. Two subsequent permanency plans, dated July 22, 2008, and January 7, 2009, contained identical requirements as the initial plan. Those plans indicated that Mother was not making enough progress on any of the requirements to justify any changes.

After the children entered DCS custody, it was determined that Mother was abusing cocaine. In her trial testimony, Mother stated that she had used cocaine every day. In the two years in which she was involved with DCS, Mother attended three different rehabilitation programs to address her drug abuse, but did not successfully complete all of those programs. Mother finally completed drug treatment at Bradford Health Services (“Bradford”) in May 2009. However, even after completing that program, Mother admitted that she relapsed and used drugs one month before the termination proceeding in June 2009. Mother testified as follows:

Q. Now, in the two years that your children have been in State custody, have you continued to use drugs?

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<sup>1</sup>In an affidavit filed with the court, Mother spelled her son’s name as “Daeshon.” The guardian ad litem also spelled the name as “Daeshon.” Additionally, the DCS permanency plans spell the name as “Daeshon.” However, as the official record before us denotes the child’s name as “Deashon,” we will utilize that spelling for consistency purposes.

A. Off and on, yes . . . .

Q. All right. When is the last time you tested positive for illegal drugs?

A. I think June 19th.

Q. Of this year?

A. Yes, sir.

Q. So as late as a month ago, you were still using cocaine; is that right?

A. I just had a relapse, just one time, after I had got my certificate.

Mother testified that the two months that she was in treatment at Bradford was the longest she had gone without using drugs in a long time.

Mother did make some attempts to comply with the requirements of the permanency plans. She testified that she did pay child support; however, she only provided evidence of such support being paid beginning in May 2009, after the filing of the termination petition. She successfully completed a parenting program after the filing of the termination petition. She stated that she had worked on and off over the time period in question. Additionally, she claimed that since completing the last treatment program, she had been attending AA classes.

Dr. Alice Greaves, a clinical psychologist with 18 years of experience as a therapist, testified that she met with Mother in November 2008, for a mental health assessment. When Dr. Greaves asked Mother about her drug use, Mother stated that she had only tried cocaine one time and that her exposure to alcohol and other drugs was extremely limited. However, when Mother testified at trial, she indicated that when she used drugs, her primary concern was herself and that it was not possible for her to think about her children. Dr. Greaves opined that Mother was in need of additional individual counseling to work on her issues of narcissism as well as her need to manipulate. Dr. Greaves felt that it was necessary for Mother to address those issues she possessed that prevented her from appropriately putting her children's needs before her own and recognizing the impact of her behavior on others. Yet, despite treatment recommendations to resolve the identified issues, Mother cancelled or failed to show up for her scheduled meetings with Dr. Greaves. Dr. Greaves testified that it appeared Mother failed to return once she realized that drug testing was a requirement of the treatment process.

Ceyolonja Carr, the DCS caseworker at the time of trial, testified that she had been involved with the family since August 2008. She noted that the children had already been in DCS custody for about a year by that time. According to Ms. Carr, she obtained extra time for Mother to meet the requirements of the permanency plans:

A. When I took over the case, they were approaching termination of parental rights at that time, but I requested the court and the foster care board if I could please have an opportunity to work with the family. I'd spoken with [Mother] and she said that she wanted to work the plan, so I asked the court if they would please allow me to work with the family, and they did.

Q. All right. Why did you ask for that second chance at that time?

A. I just felt that termination was so drastic and the children were so young and . . . my personal opinion is I don't like terminations, and so I just wanted to have an opportunity to give her a chance to, you know, get her kids back.

Q. To show you what she can do?

A. Yes, sir.

Q. All right. Now, in the year that has transpired since that time, have you made any real progress with [Mother]?

A. No, sir.

Q. All right. And have you reached the conclusion that termination is in the best interest of these children at the present time?

A. Yes.

\* \* \*

A. . . . [S]he put forth attempts to start, but then she'd stop. She would start and then she'd stop. I tried to commend her for the things that she had . . . completed on her permanency plan. She had held housing for, at that particular time, over a year. She had had part-time employment off and on, although she did not supply any documentation of that, but she said she'd been working, and she was maintaining the housing, and so it could be assumed that she had income to maintain housing, and it was furnished. The housing had

furnishings or whatever. But she'd do a little and then she'd stop.

Q. Did you ever see a continuity of purpose on [Mother's] part that would have led you to place these children back with her?

A. Unfortunately not.

\* \* \*

Q. Are you any closer to returning these children to [Mother] . . . than you were the very first day you got this case?

A. No, sir.

\* \* \*

Q. Based on [Mother's] testimony, do you feel there's been any progress made?

A. No, sir.

Ms. Carr scheduled parenting and mental health assessments for Mother; she arranged for drug screens; and she arranged regular visitation between Mother and the children. Even with this assistance, Ms. Carr was concerned, however, with Mother's continued drug use, based upon Mother's positive drug screens in February and June 2009. She reiterated the importance of fully participating in the treatment programs and following up on the subsequent recommendations. Ms. Carr further noted that she had been provided no proof that Mother was attending AA meetings.

June Moon, who worked for Pathfinders, the company providing drug screenings, testified that upon the request of Ms. Carr, she performed two drug tests on Mother. Ms. Moon's initial attempts at performing requested screenings were unsuccessful because Mother was uncooperative. Ms. Moon was finally able to perform screens on Mother in February and June of 2009, and both of those tests registered positives for cocaine.

DCS filed its initial petition to terminate Mother's parental rights on March 10, 2009.<sup>2</sup>

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<sup>2</sup>DCS also filed a petition to terminate the parental rights of Mother to Johnny. The related case is (continued...)

An amended petition was filed on April 1, 2009. The grounds asserted for termination were that Mother had abandoned her child by failing to visit; that she had failed to substantially comply with the reasonable requirements of the permanency plans; and that the conditions preventing reunification of Mother with her child persisted.<sup>3</sup> The trial took place on July 14, 2009.

At the time of the trial, both of Mother's sons resided in the home of Jason and Toya G., where they had been for approximately 18 months. Mrs. G. testified that while the children generally did well in her home, both of them would exhibit negative behaviors – disobedience – following visitation with Mother. Despite these challenges, the Gardners expressed their desire to adopt the children should they become available for adoption.

The trial court entered final orders terminating Mother's parental rights on July 21, 2009. The court held that clear and convincing evidence existed showing that Mother had failed to substantially comply with the reasonable requirements of the permanency plans and that the conditions that prevented the reunification of Mother with Deashon persisted. In addition, the court found that termination of Mother's parental rights was in the best interests of the Child. Mother filed a timely notice of appeal.

## II. ISSUES

The issues raised by Mother are restated as follows:

- A. Whether the trial court properly concluded that Mother failed to substantially comply with the reasonable obligations of the permanency plans.
- B. Whether the trial court properly concluded that Mother failed to remedy those conditions preventing the return of Deashon to her care.
- C. Whether the trial court properly concluded that termination of Mother's parental rights was in the best interest of her Child.

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<sup>2</sup>(...continued)  
09-A-017.

<sup>3</sup>DCS also sought to terminate Father's parental rights in the amended petition. Father's counsel indicated at trial that Father consented to termination of his parental rights.

Mother also asserted that the State failed to make reasonable efforts to place Deashon with suitable relatives in order to expedite safety and permanence for the Child.

### III. STANDARD OF REVIEW

We employ the following standard of review in cases involving the termination of parental rights:

[T]he Court's duty . . . is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

*In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). The trial court's findings of fact are reviewed de novo upon the record accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. *Id.*; Tenn. R. App. P. 13(d). In weighing the preponderance of the evidence, great weight is accorded to the trial court's determinations of witness credibility, which shall not be reversed absent clear and convincing evidence to the contrary. *See Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002). Questions of law are reviewed de novo with no presumption of correctness. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002).

Parents have a fundamental right to the care, custody, and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995) (rev'd on other grounds, *In re Swanson*, 2 S.W.3d 180 (Tenn. 1999)); *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). This right "is among the oldest of the judicially recognized liberty interests protected by the Due Process Clauses of the federal and state constitutions." *In re M.J.B.*, 140 S.W.3d 643, 652-53 (Tenn. Ct. App. 2004). "Termination of a person's rights as a parent is a grave and final decision, irrevocably altering the lives of the parent and child involved and 'severing forever all legal rights and obligations' of the parent." *Means v. Ashby*, 130 S.W.3d 48, 54 (Tenn. Ct. App. 2003) (quoting Tenn. Code Ann. § 36-1-113(l)(1)). "Few consequences of judicial action are so grave as the severance of natural family ties." *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)).

While parental rights are superior to the claims of other persons and the government, they are not absolute, and they may be terminated upon a finding of appropriate statutory grounds. *See Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002). Due process requires clear and convincing evidence of the existence of the grounds for termination of the parent-

child relationship. *In re Drinnon*, 776 S.W.2d at 97. Tenn. Code Ann. §36-1-113 is a statute governing termination of parental rights in this state. A parent's rights may be terminated only upon "(1) [a] finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and (2) [t]hat termination of the parent's or guardian's rights is in the best interests of the child." Tenn. Code Ann. § 36-1-113(c); *In re F.R.R., III*, 193 S.W.3d at 530. Both of these elements must be established by clear and convincing evidence. *See* Tenn. Code Ann. §36-1-113(c)(1); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The existence of at least one statutory basis for termination of parental rights will support the trial court's decision to terminate those rights. *In re C.W.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000) (abrogated on other grounds, *In re Aubrey S.*, 182 S.W.3d 838 (Tenn. Ct. App. 2005)).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d at 474; *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable. *State v. Demarr*, No. M2002-02603-COA-R3-JV, 2003 WL 21946726, at \*9 (Tenn. Ct. App. M.S., Aug. 13, 2003), and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d at 546; *In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004); *In re J.J.C.*, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). It produces in a fact-finder's mind a firm belief or conviction regarding the truth of the facts sought to be established. *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001); *In re C.W.W.*, 37 S.W.3d at 474.

#### IV. DISCUSSION

##### A.

##### 1.

Tennessee law requires the development of a plan of care for each foster child and further requires that the plan include parental responsibilities that are reasonably related to the plan's goal. Tenn. Code Ann. §37-2-403(a)(2)(A) (Supp. 2009). A ground for termination of parental rights exists when a petitioner proves by clear and convincing evidence that "[t]here has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care . . . ." Tenn. Code Ann. §36-1-113(g)(2) (Supp. 2009).

To establish substantial noncompliance, the trial court must initially find "that the requirements of the permanency plans are reasonable and related to remedying the conditions



that caused the child to be removed from the parent's custody in the first place." *In re M.J.B.*, 140 S.W.3d at 656; *see In re Valentine*, 79 S.W.3d at 547. When the trial court does not make such findings, the appellate court should review the issue de novo. *In re Valentine*, 79 S.W.3d at 547. Second, the court must find that the parent's noncompliance is substantial, *In re M.J.B.*, 140 S.W.3d at 656, meaning that the parent must be in "noncompliance with requirements in a permanency plan that are reasonable and related to remedying the conditions that warranted removing the child from the parent's custody." *In re Z.J.S.*, No. M2002-02235-COA-R3-JV, 2003 WL 21266854, at \*12 (Tenn. Ct. App. M.S., June 3, 2003).

To assess a parent's substantial noncompliance with a permanency plan, the court must weigh "both the degree of noncompliance and the weight assigned to that particular requirement." *In re Z.J.S.*, 2003 WL 21266854, at \*12. Conversely, "[t]erms which are not reasonable and related are irrelevant, and substantial noncompliance with such terms is irrelevant." *In re Valentine*, 79 S.W.3d at 548-49.

Mother argues that she was not present when the initial permanency plan was drafted. She complains that the plans included requirements for a mental health assessment and alcohol and drug treatment when mental health and drug issues were not the reason for the removal of the children (DCS assumed custody because both parents were incarcerated and Mother had left the children with an inappropriate caregiver). Thus, she asserts that DCS has not demonstrated that the requirements of the permanency plans were reasonable and related to remedying the conditions that caused the Child to be removed from Mother's custody in the first place.

Requirements that a parent desist from the use of drugs, complete substance abuse assessments, and follow resulting drug treatment recommendations are justified for the purpose of creating a safe and nurturing environment for a child. *See In re M.C.B.*, No. E2007-01736-COA-R3-PT, 2008 WL 957963, at \*5 (Tenn. Ct. App. E.S., Apr. 9, 2008). Thus, it was proper for the trial court to conclude that the requirements challenged by Mother were reasonable and directly related to eliminating a condition that caused the Child to be placed in DCS custody. Indeed, Mother notes in her brief that she agrees that her children "had been left with an inappropriate caregiver." Accordingly, goals addressing safety are proper.

When the children came into custody in June 2007, it became know that Mother was a cocaine addict. This addiction persisted throughout her involvement with DCS, as evidenced by multiple positive drug screens, including one on June 19, 2009, just one month before the termination proceeding. Therefore, the permanency plans reasonably required Mother to be alcohol and drug free. To fulfill this requirement, Mother was to have an

alcohol and drug assessment and to follow through with all of the recommendations regarding her treatment needs; to submit to random drug screens; and to sign a release to allow DCS to monitor her progress and compliance.

As to the other requirements, because it was important that the children have a safe environment where all of their emotional, physical, medical, and developmental needs were consistently met, it was reasonable for the permanency plans to call for Mother to maintain a home suitable for meeting these needs, to have a legitimate, verifiable means of income sufficient to provide for the children, and to pay child support for the care and maintenance of the children while they were in DCS custody. Additionally, given Mother's youth, the amount of time the children were out of her custody, and her drug issues, the plans reasonably required that she demonstrate her ability to appropriately parent, nurture, and protect her children by completing a mental health assessment and following through with all of the recommendations. Further, since the children were in state custody for a lengthy period, in order to establish and maintain a necessary bond between Mother and the children, her adherence to a schedule of regular visitation was quite reasonable.

We find that while Mother did attempt to comply with some of the requirements enumerated in the permanency plans, the trial court's finding that she was in substantial noncompliance is supported by clear and convincing evidence. The trial court determined that Mother's drug use was the most important matter at issue. However, Mother refused to allow random drug screens on a number of occasions. When Mother did actually submit to drug screens on February 26, 2009, and June 20, 2009, both screens tested positive for cocaine. Significantly, when Mother attempted to comply with the permanency plans' requirements, she was inconsistent in her attempts. She testified to only working on the goals of her permanency plans "off and on." For instance, while Mother did submit to a mental health assessment with Dr. Greaves, she neglected to follow Dr. Greaves' recommendation that she engage in individual counseling and failed to return for treatment following the initial mental health assessment. Also, while Mother testified that she did pay child support, she only provided evidence of such support being paid beginning in May 2009, after the filing of the termination petition. She admits in her brief that "when her visitation was moved from her mother's home to the DCS offices she did miss some visitation for a time." She did not complete the parenting program until after the filing of the parental rights termination petition. Indeed, her efforts reflect the fact that she did not get serious about fulfilling the requirements of the permanency plans until 2009, almost two years after her children came into DCS custody, and really only after the filing of the termination petition in March 2009. Ms. Carr testified that despite her efforts to aid Mother in fulfilling the requirements of the plans, there was no continuity of purpose on Mother's part and that as a result, DCS was no closer to placing the children in Mother's custody at the time of the trial than when Ms. Carr first got the case in August 2008.

As this court noted in *In re M.C.B.*,

[t]his Court acknowledges the enormous effort required of a person seeking to overcome an addiction to cocaine after many years of consistent use. The Court further acknowledges that the record is not devoid of proof that Mother has made some sincere attempts in that regard since her . . . children were removed from her custody. Tragically, however, the record as a whole contains clear and convincing proof that Mother's efforts have been inadequate . . . .

*Id.* at \* 6. We conclude that the trial court properly found by clear and convincing evidence that Mother was in substantial noncompliance with the obligations of the permanency plans. Thus, a statutory ground existed for termination of Mother's parental rights.

2.

Mother argues that DCS should also have attempted to place her children with a relative placement. According to Mother, several of her relatives applied for custody of the children, but DCS did not act upon the petitions until after the termination petition was filed. She contends that DCS has presented no evidence of any attempt to seek a relative placement. She appears to be asserting that the obligation of DCS to use reasonable efforts to assist her in achieving the goals of her permanency plans extends to placing her children with a relative.

Tenn. Code Ann. §37-2-403(d) (2005) provides:

Whenever a child is removed from such child's home and placed in the department's custody, the department shall seek to place the child with a fit and willing relative *if such placement provides for the safety and is in the best interest of the child*. Notwithstanding any provision of this section or any other law to the contrary, whenever return of a child to such child's parent is determined not to be in the best interest of the child, then such relative with whom the child has been placed shall be given priority for permanent placement or adoption of the child prior to pursuing adoptive placement of such child with a non-relative.

*Id.* (emphasis added).

In *In re O.J.B.*, No. W2009-00782-COA-R3-PT, 2009 WL 3570901 (Tenn. Ct. App.

W.S., Nov. 2, 2009), a parent argued that DCS did not make reasonable efforts to place her child with an aunt. *Id.* at \*9. We disagreed with the contention:

This statute . . . governs permanency plans for children in foster care. In *In re K.L.D.R.*, No. M2008-00897-COA-R3-PT, 2009 WL 1138130, at \*8 (Tenn. Ct. App. Apr. 27, 2009), another parental termination case, a mother similarly argued that DCS “failed to attempt to place [the child] with a fit and willing relative pursuant to Tenn. Code Ann. §37-2-403(d).” The Court stated that “this issue concerns custody and *should have been raised in the dependency and neglect proceeding. It is not a basis to defeat a petition to terminate parental rights.*” *Id.* In any event, however, “*T.C.A. §37-2-403(d) does not mandate relative placement. Rather, the statute requires DCS to consider such placement in light of the safety and best interest of the child.*” *State, Dept. of Children’s Services v. Hardin*, No. W2004-02880-COA-R3-PT, 2005 WL 1315812, at \*16 (Tenn. Ct. App. May 26, 2005). . . .

*In re O.J.B.*, 2009 WL 3570901, at \*9 (emphasis added). *See also In re J.D.L.*, No. M2009-00574-COA-R3-PT, 2009 WL 4407786, at \*9 (Tenn. Ct. App. W.S., Dec. 2, 2009).

At trial, Tarica Wynn, Mother’s aunt, testified that she was ready and able to assume care and custody of the children. She indicated that she had filed a petition for custody of the children, but the juvenile court denied the petition based on the fact that Ms. Wynn has four children of her own and no employment.

We find no evidence that DCS failed to properly consider placement of the children with Mother’s relatives. Most importantly, the issue is not appropriate for consideration at this stage of the termination process, as it is not a basis to defeat a petition to terminate parental rights.

### 3.

Under Tennessee law, a court may terminate parental rights when:

The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions which led to the child’s removal or other conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect and which,

therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. §36-1-113(g)(3)(A)-(C) (Supp. 2009).

Here, it is undisputed that Deashon had been in state custody for more than six months at the time DCS filed its petition to terminate Mother's parental rights. In fact, at the time of the trial, he had been in custody for more than two years.

As already outlined above, conditions that led to Deashon's removal persisted and there was little likelihood these conditions would be remedied at an early date given Mother's relapse. At the time of the trial, Mother was on probation for theft. This court finds it significant that she would risk using drugs in the face of the potential criminal consequences due to her probation and the negative consequences of preventing reunification with her children. The fact that Mother was only able to remain off drugs for a two-month period in the two years in which she was involved with DCS rationally led the trial court to conclude that Mother's drug abuse would not be remedied at an early date so that her children could be returned to her care.

Additionally, the trial court found that the continuation of the parent-child relationship greatly diminished the children's chances of integrating themselves into a safe, stable, and permanent home. At the time of the trial, the children were in a pre-adoptive home, with foster parents to whom they had bonded well. Ms. Carr noted that

Deashon and Johnny have the bond with the foster family. They have a foster father and a foster mother that interact very well with them. They have two foster siblings, which are the foster parents' biological children, but they have siblings in the home that they have a bond and attachment to. They play together as siblings. They interact very well. They do family outings and vacations together. It's really a beautiful thing to see them.

The evidence further established that the children exhibited negative reactions after visiting

with Mother.

A review of the record proves by clear and convincing evidence that the conditions which resulted in the Child's removal from Mother's custody or other conditions that in all reasonable probability would have caused the Child to be subjected to further neglect have persisted more than six months after the Child was removed, that the conditions are not likely to be remedied in the near future, and that continuation of the parent-child relationship here would present an obstacle to the Child's integration into a safe, stable, permanent home. Accordingly, the evidence does not preponderate against the trial court's finding that persistent conditions were established by clear and convincing evidence.

B.

Having concluded that there was clear and convincing evidence supporting each of the statutory grounds to terminate Mother's parental rights, we must consider whether clear and convincing evidence also supports the trial court's conclusion that it was in the best interest of the Child to terminate Mother's parental rights. Tenn. Code Ann. §36-1-113(c)(2) (Supp. 2009). We are guided by the non-exclusive list of factors provided in Tenn. Code Ann. §36-1-113:

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to §36-5-101.

Tenn. Code Ann. §36-1-113(i) (Supp. 2009). As this court has noted, "this list [of factors] is not exhaustive, and the statute does not require a trial court to find the existence of each enumerated factor before it may conclude that terminating a parent's parental rights is in the best interest of a child." *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). The General Assembly has also stated that "when the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child, which interests are hereby recognized as constitutionally protected and, to that end, this part shall be liberally construed." Tenn. Code Ann. §36-1-101(d); *see also White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004) (holding that when considering a child's best interest, the court must take the child's perspective, rather than the parent's).

In this case, the trial court concluded that a number of the best-interest factors weighed against Mother. Mother has failed to make an adjustment of circumstances such that it would be safe and in the best interest of the Child to return home. *See* Tenn. Code

Ann. §36-1-113(i)(1). Mother's failure is such that it does not appear reasonably possible that a lasting adjustment is possible. *See* Tenn. Code Ann. §36-1-113(i)(2). Mother has failed to maintain regular visitation and/or contact with Deashon; she failed to regularly visit the Child since January 2009, as a result of her failure to present a clean drug screen. *See* Tenn. Code Ann. §36-1-113(i)(7). Deashon was in a safe and stable foster home with foster parents to whom he had bonded and who wished to adopt him and his brother. A removal from his foster parents to Mother would have traumatized Deashon. *See* Tenn. Code Ann. §36-1-113(i)(5). Mother continued to have a problem with drugs, relapsing only one month prior to the termination hearing. Thus, the continued criminal activity and use of controlled substances rendered Mother unable to care for her Child in a safe and stable manner. *See* Tenn. Code Ann. §36-1-113(i)(7). Finally, Mother failed to demonstrate regular payment of child support, as she only offered proof of child support payments for the period after the termination petition was filed. *See* Tenn. Code Ann. §36-1-113(i)(9).

For all these reasons, the trial court correctly held that termination of Mother's parental rights was in the best interest of the Child. The evidence does not preponderate against the trial court's findings.

## V. CONCLUSION

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Ashley T. K. This case is remanded to the trial court, pursuant to applicable law, for enforcement of that court's judgment.

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JOHN W. McCLARTY, JUDGE